

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1272 of 1984

with

CIVIL REVISION APPLICATION No 703 of 1992

Date of decision: 16-8-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KHARAK MOHANBHAI BECHARBHAI BHUT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1272 of 1984

MR JT TRIVEDI for Petitioner

Mr. Nigam Shukla for Respondent No. 1

2. Civil Revision Application No 703 of 1992

MR JT TRIVEDI for Petitioner

Mr. Nigam Shukla for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/08/96

ORAL JUDGEMENT

Heard the learned counsel for the parties. Since the special civil application and the revision application raise same controversy they are being disposed of by this common judgment.

The petitioner instituted regular civil suit No.180 of 1979 in the court of C.J.(J.D.), Mahuva, District: Bhavnagar, against one Kharak Kanabhai Lakhmanbhai, respondent in civil revision application No.703 of 1984. The suit was for recovery of certain amount borrowed by that person who happened to be the first cousin of the petitioner. In the written statement the respondent in civil revision application inter alia contended that the suit transaction is hit by the provision of the Bombay Money Lenders Act, 1946. The petitioner was not having money lending licence. The trial court negatived the said contention and decreed the suit in favour of the petitioner for Rs.2875/- with interest and costs. The respondent in the special civil application preferred regular civil appeal No.46 of 1981 in the District Court at Bhavnagar. The appeal was allowed by the learned Extra Assistant Judge vide his judgment and order dated 5-2-1982 and the suit was remanded back to the trial court. The proceedings of the civil suit were stayed under the provisions of section 10(1) of the Bombay Money Lenders Act for a period of three months. This course has been adopted by the first appellate court to afford the plaintiff an opportunity to produce licence under the Money Lenders Act. That judgment and order of the first appellate court is challenged by the petitioner in civil revision application No.703 of 1984. Rule was issued in revision application and interim relief in terms of para 7(B) was also granted.

2. The petitioner applied to the competent officer for giving him money lender's licence. This application was made by the petitioner on 3-5-1982. The said application was rejected by the competent authority on 4-2-1983. The petitioner has taken up the matter in appeal, but that too has been dismissed. Hence the special civil application.

3. The learned counsel for the petitioner filed today in the court affidavit of the petitioner stating that the petitioner is aged 76 years; that prosecution has been launched against him in the court of Judicial Magistrate (First Class), Mahuva, District Bhavnagar, and the same been stayed by this Court while admitting the present petition. He has further stated that he had a

paralytic stroke some time ago and he cannot move.

4. learned counsel for the petitioner contended that the order of the authorities not to grant licence to the petitioner under the Bombay Moneylenders Act is illegal. The reasons given by the authorities to decline grant of licence to the petitioner are not sufficient for denial of licence.

5. I have gone through the orders made by the Registrar of Moneylenders, Rajkot and the Registrar General of Moneylenders, Gandhinagar. I do not find any illegality committed by those authorities in making the said orders. The petitioner has rightly been held to be not entitled to licence under the Moneylenders Act. The petitioner's counsel is unable to give out any reasons why the earlier licence was taken by the petitioner in the name of minor son. I do not consider it a fit case where this court should interfere with the orders passed by the concerned authorities.

6. The counsel for the petitioner then made submission that atleast the prosecution which has been ordered against the petitioner should not be allowed to continue for the reason that the petitioner is aged 76 years an.J

move. It has further been stated that the petitioner has already retired from all avocations. Learned counsel for the petitioner lastly contended that it was money lending dealing between close relations, and the debtor was none other than petitioner's own aunt's son.

7. I have considered the submissions made by the learned counsel for the petitioner. The petitioner has not given out under which provision of the Bombay Moneylenders' Act prosecution has been launched against the petitioner. Section 34 of the Moneylenders Act, 1946 reads as under:

"34. General provision regarding penalties.-Whoever fails to comply with or acts in contravention of any provision of this Act, shall, if no specific penalty has been provided for in this

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(a) for the first offence with simple imprisonment which may extend to two months or with fine which may extend to Rs.500 or with both, and

(b) for the second or subsequent offence with imprisonment of either description which may extend to six months or with fine or with both."

Section 35 of the Act provides for certain offence to be cognizable. These are offences under section 34 for contravening the provisions of section 5, and offence under section 33 of the Act. Section 5 of the Act provides that no money-lender shall carry on the business of money-lending except in the area for which he has been granted a licence and except in accordance with the terms and conditions of such licence. Taking into consideration the facts of the case, prosecution would have been launched against the petitioner under section 34 of the Act for contravention of the provisions of section 5 of the Act which is a cognizable offence. Section 35C of the Act provides for compounding of certain offences. This section provides that the Registrar may, either before or after the institution of proceedings for any offence punishable under section 34 for contravening the provisions of section 18 or section 19, accept from any person charged with such offence by way of composition of the offence a sum not exceeding fifty rupees. Taking into consideration the scheme of the Act the offence committed by the petitioner under section 34 for contravention of the provisions of section 5 is not compoundable. Prosecution has already been launched, though it is a different matter that the same remained stayed for all these years. The question which falls for consideration is whether this Court can quash the prosecution launched against the petitioner, more so when the orders of the Registrar and the Registrar General challenged in the special civil application refused not to grant money-lender's licence to the petitioner maintained. Obviously the answer will be in the negative. The proper course for the petitioner would have been to approach the Court for taking lenient view in the facts and circumstances of the case, with a request to decide the matter at an early date. However, it is for the petitioner to decide whether to approach the court of Judicial Magistrate (First Class) Mahuva, District Bhavnagar where the criminal case launched against him is pending. It is expected of the Court below to decide the application, if any, filed by the petitioner and further it is expected of the court to take into consideration the fact that the petitioner is an old man aged 76 years and he had paralytic stroke. If such application is made the same shall be decided within a period of two months from the date of filing of the same.

8. In the result the special civil application fails and the same is dismissed. Subject to the aforesaid observations rule discharged. Ad interim relief granted earlier stands vacated. No order as to costs.

9. In view of the dismissal of special civil application No.1272 of 1984 civil revision application No.703 of 1984 fails and the same is dismissed. Rule discharged. Ad interim relief granted earlier stands vacated. No order as to costs.

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